141 "If any section or provision of this act shall be found invalid by any court, it shall be conclusively presumed that this act would have been passed by the legislature without such invalid section or provision, and the act as a whole shall not be declared invalid by reason of the fact that one or more sections or provisions may be found to be invalid by any court." (Laws 1920, ch. 29, sec. 28.)

The rule is familiar that a part of a statute which is unobjectionable in itself may be enforced notwithstanding another part is adjudged unconstitutional, if it appears that the void portion was not an inducement to the enactment of the rest—that the legislature desired the unobjectionable part to become a law irrespective of the validity of the remainder. Here the express declaration disposes of any possible doubt that might otherwise exist as to the legislative intent, and requires the court to give effect to all portions of the statute that do not in themselves violate some constitutional provision. (Sate v. Wilson, 101 Kan. 789, 806, 168 Pac. 679.)

3. No reasons are suggested and none occur to us why the legislature may not authorize the court of industrial relations to conduct an inquiry into conditions existing in the mining field and in furtherance of that inquiry require the attendance of witnesses. Much of the argument in behalf of the defendants is based upon objections to the provisions of the statute undertaking to restrain the conduct of employees in the mining industry and others classified with it. As already indicated the validity of those provisions is not and could not be involved here. It is elementary that a statute can be attacked on constitutional grounds only by one whose right as guaranteed by the constitutional provision invoked is being assailed under color of the statute. The defendants in their character as witnesses whose attendance before the court is sought in order that they may give information concerning the subject of inquiry, have no stand-
142 ing to question the validity of any provisions of the statute other than those directly involved, for they could suffer no possible injury therefrom in this proceeding. The constitutionality of a statute is inquired into by a court no further than is necessary to a determination of the case before it. These familiar principles preclude any consideration at this time of most of the objections to the judgment upon the constitutional grounds which the defendants first urged, then withdrew, and later renewed. Counsel for the state have shown a readiness to meet upon the merits the objections made to various provisions of the statute, but until these provisions are attacked by some one competent to question their validity—by some one whose rights in respect to the subject matter of the litigation are injuriously affected by them—any expression of opinion by the court would be dictum.

4. It is suggested that the evidence did not warrant a finding that the defendants had refused to testify. It was shown without contradiction that after they had been served with an order of the district court to appear forthwith before the court of industrial relations

to give their testimony they were in another room of the building where that court was sitting and told the sheriff, who came to them on account of an inquiry by the presiding judge, that they were having a little meeting of their own and would be through in about ten minutes; that they did not then appear and at no time showed any disposition to obey the process; that the defendant Howat said they wouldn't come unless they were taken. Any defect that may exist in the way of formal proof on the subject is rendered entirely immaterial by the objections the defendants are still urging to the validity of the law and by the fact that as already stated they were committed only until such time as they should submit to be sworn and testify, so that they could at any moment have obtained their liberty by signifying their willingness to do so.

5. The occasion for the aid of the district court being invoked to require the attendance of witnesses before the court of industrial relations arises from the well understood fact that the latter body in spite of its name is an administrative and not strictly a ju-
143 dicial tribunal and is therefore regarded as incapable of enforcing its own process. (In re Sims, Petitioner, 54 Kan. 1, 37 Pac. 135; In re Huron, 58 Kan. 152, 48 Pac. 574.) The defendants argue that the district court under the statute is without authority to compel the attendance of a witness before any other tribunal than itself. The industrial court act however contains this provision:

"In case any person shall fail or refuse to obey any summons or subpœna issued by said court (of industrial relations) after due service then and in that event said court is hereby authorized and empowered to take proper proceedings in any court of competent jurisdiction to compel obedience to such summons or subpœna." (Laws 1920, ch. 29, Sec. 11.)

We interpret this language as authorizing the procedure here followed—the issuance and service of an order by the district court requiring the defendants to appear before the court of industrial relations, and their commitment for contempt for refusing to obey that order. The district court being one of general jurisdiction is obviously a proper tribunal to which to apply for the needed aid and the method pursued is one naturally adapted to the end sought. The constitutionality of the provision quoted has not been challenged except by an objection relating to the title, which will be mentioned later. A similar feature of the federal law relating to the attendance of witnesses before the interstate commerce commission has been upheld against the contention that the action of a court in requiring a witness to appear before an administrative body was nonjudicial. (Interstate Commerce Commission v. Brimson, 154 U. S. 447, 155 U. S. 1.) The arguments upon both sides of that question are so fully set out in the opinions cited that further discussion is regarded as unnecessary. We hold the provision to be valid.

6. The defendants suggest that they are protected by the guaranty of the state constitution against a witness being required to incrimi-

nate himself (Bill of Rights, sec. 10), because they were among the persons named as interested in the controversy which was the basis of the investigation instituted by the industrial court. It cannot be said that any question that might be put to the defendants as witnesses would necessarily call for a reply tending to incriminate them. Until they had appeared and some question had been
144 asked there could be no basis for forming a judgment as to whether or not they were entitled to refuse to answer.

7. The point is sought to be made that the governor had no authority to call the special session of the legislature at which the industrial court act was passed, because no extraordinary occasion therefor existed. The governor is the final judge of that question. (Farrelly v. Cole, 60 Kan. 356, 56 Pac. 492.)

8. The title of the act under consideration reads: "An Act creating the Court of Industrial Relations, defining its powers and duties and relating thereto, abolishing the Public Utilities Commission, repealing all acts and parts of acts in conflict therewith, and providing penalties for the violation of this act." The contention is made that this is insufficient and the provision of the state constitution with reference thereto (Art. 2, sec. 16) is therefore violated because the title refers to a court, and the body undertaken to be created is not judicial in its character. The word court is often employed in statutes otherwise than in its strict technical sense, and is applied to various tribunals not judicial in their character. Instances may be found in Words & Phrases Judicially Defined, of which an illustration is Aldrich v. Aldrich, 49 Mass. 102, 106.

The provision of the act already quoted, authorizing the district court to aid in requiring the attendance of witnesses before the industrial court is objected to as foreign to the title. The title includes the words—"An act creating the court of industrial relations. * * * and relating thereto." The provision in question certainly has relation to the new tribunal and is pertinent to the subject expressed. Other objections are made on the ground that the title is too restrictive. We think them not well taken, but as the provisions to which they relate could be disregarded without affecting the result of the present case we deem it unnecessary to set them out.

The act (sec. 2) undertakes to confer upon the court of industrial relations the powers previously vested in the public utilities commission, which it succeeds. It is argued that this method of legislating violates the provision of the section of the constitution
145 already referred to which forbids the revival or amendment of a law unless the new act contain the entire act revived or the section or sections amended. This provision however does not prevent legislation by reference (State v. Shawnee County, 83 Kan. 199, 110 Pac. 92) and the objection is not sound.

It is contended that the act is void because executive, legislative and judicial functions are commingled in the grants of power to the court of industrial relations, within the authority of State v. Johnson, 61 Kan. 803, 60 Pac. 1068. The opinion in that case was written while the principles controlling the place in government of

dministrative boards was in the process of development. It is pos-
ible that language may have been there used which might require
me modification before its acceptance as having universal applica-
on. But the vital grounds upon which the statute there considered
as held void do not exist here. The present law bears internal evi-
ence of having been drawn with a view to avoiding the features of
he court of visitation act upon which the decision cited was based.
The function of a tribunal of the general character of the court of
ndustrial relations has become so fully recognized that we do not
egard it as necessary to undertake a review of the subject at this
me. (6 R. C. L. 179.)

9. It is urged that the following provisions of the act are invalid
or the reasons indicated:

That authorizing proceedings in the supreme court to enforce com-
liance with the orders of the court of industrial relations, in which
ew evidence may be admitted (sec. 12), because this amounts to an
ttempt to enlarge the original jurisdiction of the former body;

That authorizing the supreme court to compel the court of indus-
rial relations under certain circumstances to enter just, reasonable
nd lawful orders (sec. 12), because this undertakes to confer legis-
ative power on the supreme court;

That authorizing the court of industrial relations to modify the
erms of contracts of employment which are found to be unfair,
njust or unreasonable (sec. 9), because it violates the 14th amend-
ment to the federal constitution.

46 That forbidding the discharge of an employee because of
his testifying before the court of industrial relations, or bring-
ng to its attention any matter of controversy between employers and
mployees (sec. 15), for the same reason;

That requiring employers to keep a record of wages paid (sec. 23),
or the same reason;

That forbidding employees to conspire to quit their employment
or the purpose of interfering with the operation of the industry
sec. 17), for the same reason;

That forbidding a conspiracy to do injury to others by picketing
n account of anything done by the court of industrial relations, or
nder its orders, or of its aid having been invoked (sec. 15), be-
ause it involves a denial of free speech.

We think it obvious that none of these matters are involved in the
resent case.

10. Finally it is contended that the act is void as an attempt to
nterfere in matters of purely federal jurisdiction—that the national
overnment has so fully occupied the ground attempted to be covered
y the industrial court law that there is no field left in which the
atter may operate. The agencies which the defendants regard as
ringing about this result are:

The entrance into an interstate contract between the international
fficers of the United Mine Workers of America and the representa-
ives of the Coal Operators Association of the United States at the
onclusion of the coal strike a little over six months ago;

The appointment by the president of a commission to hear an
determine matters of hours, wages and conditions in the mining i
dustry in the United States;

The Clayton act (38 U. S. St. at L. 730), relating to unlawf
restraints and monopolies in interstate commerce, particularly th
portion thereof (sec. 20) which forbids federal courts to grant injun
tions against certain conduct of employees, of which ceasing to pe
form work is an illustration, and which declares that such condu
shall not be held to be violative of any law of the Unite
States;

147 The Lever Act (40 U. S. St. at L. 276) providing for go
ernmental control of the production and distribution of foo
and fuel until the termination of the war.

It is quite possible that the scope of the authority of the court
industrial relations may be limited in some respects by these age
cies—that a particular order made by that body might be found
be ineffective, for instance, because in conflict with some lawful ord
of a federal officer or body, or because constituting an undue inte
ference with interstate commerce. We think it too clear to requi
elaboration that whatever restrictions may thus be placed on loc
action it cannot be true that the state has no power to conduct inve
tigations along at least some of the lines indicated and to attempt th
remedy of certain classes of abuses that may be found to exist. Th
suggestion is made that the court should take judicial notice of a
injunction granted against the defendant Howat by a federal cour
and of a number of matters in connection therewith, and that th
judgment of the district court in the present case should be revers
by reason thereof. We are unable to discover that anything in th
facts recited either disqualifies the defendants as witnesses or giv
them any immunity from testifying. It would be utterly futile i
a proceeding the sole purpose of which is to require obedience to
subpœna to undertake to determine in detail the effect and validit
of the various provisions of the statute attacked—to attempt to ind
cate in advance as an abstract matter what decision will be mad
when an actual controversy shall arise in which the rights of th
parties depend upon the soundness of the graver propositions of la
that have been advanced by the defendants.

The judgment is affirmed.

All the justices concurring.

A true copy.

Attest:

____ ____,

Clerk Supreme Court.

148 Be it further remembered, that on the 9th day of Septe
ber, 1920, there was filed in the office of the Clerk of th
Supreme Court of the State of Kansas, a Petition for a Re-Hearin
prepared by the appellants herein, which Petition for a rehearing
in the words and figures as follows, to-wit:

149 Filed August 9, 1920. D. A. Valentine, Clerk Supreme Court.

In the Supreme Court of the State of Kansas.

No. 23013.

THE STATE OF KANSAS, Appellee,

vs.

ALEXANDER HOWAT et al., Appellants.

Petition for Rehearing.

It will be remembered that on July 19th, 1920, by an opinion delivered by Mr. Justice Mason, the above entitled case was decided by this Court and the judgment of the lower court was affirmed.

The decision being adverse to these defendants, they are filing this, their petition for a re-hearing in said cause, for the reasons set out herein. The Court will remember that as the case in this court approached the date of hearing, applications were made for a postponement. These were denied. The Court will further remember that this cause was advanced on the docket and was required to be submitted at a much earlier date than if the case had taken its turn on the docket. It was for this reason that the several attorneys engaged in this suit were unable to arrange a due preparation for a proper presentation of the matters involved in this controversy to this Court. This is especially true of the writer, who submitted a supplementary brief on July 17th. We therefore submit that upon these grounds alone, even if there were no other reasons to be advanced, in order to permit a more complete presentation of the matters in controversy here, this petition for re-hearing should be granted.

However, we think that there are many other reasons which should impel this Court to reconsider its opinion and we hasten to set out each in its turn:

150

I.

In deciding that the act creating the Court of Industrial Relations did not violate Article II, Section 10, of the Constitution of the State of Kansas, the court has overlooked certain previous decisions of this court.

It is provided by the Constitution of the State of Kansas that no law shall be revived or amended unless the new act contains the entire act revived or the section or sections amended. The Act, creating the Court of Industrial Relations, in section II, provides in part as follows:

"All laws relating to the powers, authority, jurisdiction and duties of the Public Utilities Commission of this state are hereby adopted etc."

The opinion of the Court in this case refers to this section as legislation by reference. We feel that in this instance this Court has not properly construed the authority of previous cases decided by this Court and especially the case cited by this Court (State vs. Shawnee County, 83 Kansas 199) as authority for such legislation. The legislation under consideration in State vs. Shawnee County, did not attempt to amend or re-enact any previous law. It merely provided that certain classes of municipal corporations might do certain things. It provided specifically what they were to do and only referred to the existing law to determine who should come within the new act. It did not disturb, in any wise, the law to which it referred, as was said by Mr. Justice Burch in Shawnee County case supra:

"Every one of its provisions remains in full force for the accomplishment of every purpose for which it was originally designed."

The Court of Industrial Relations Act, in Section 3, contains an example of proper legislation by reference. It provides in part as follows:

151 "The operation of the following named and indicated employments, industries, public utilities and common carriers are hereby determined and declared to be affected by the public interest * * * (5). All public utilities as defined by Section 8327 and all common carriers as defined by Section 8330 of the General Statutes of Kansas of 1915."

It is this legislation by reference that is approved in such decisions as the State vs. Shawnee County, and I have set out the above quotation from the Court of Industrial Relations Act to illustrate the tremendous difference between such reference and the re-enactment of a prior law as is attempted to be done in Section 2 of the Court of Industrial Relations Act. First the Public Utilities Commission is abolished. This is clearly, by implication at least, a repeal of the statutes respecting this commission. Then comes the sweeping re-enactment by the mere statement that all of these laws are adopted and are to be read into this act. We think, therefore, that the State vs. Shawnee County supra is not authority for this method of legislation and we respectfully urge this Court that the present opinion, in the instant case, be not permitted to so construe its previous decisions.

It is submitted that this proposition is vital in this case. In the light of the opinion of Mr. Justice Mason, holding that even if all of the other Sections of the act were invalid, the Court of Industrial Relations would be an official body, as the old Public Utilities Commission.

II.

e court has overlooked salient facts in deciding that the act valid despite the fact that the title indicates that a court is established in the body of the act.

applying the name "Court" to this tribunal, the framers of et were not acting without their own reasons. The term "com-n" and its like are not popular with the people of the State nsas. The presiding Judge of the Court of Industrial Rela- in an address before a joint meeting of the Bar Association he Commercial Club of Kansas City, Missouri, declared that ithet "damn" had been applied so frequently to the Public es Commission that he had no doubt that there were many s who had by this time arrived at the conclusion that it was a part of the proper title.

The governor of the State of Kansas has, since the passage of this act, made many addresses in various parts of the y, and before the legislatures of various states, speaking in of this tribunal. He has sought with a zeal which is no commendable, to popularize this so-called court and he has public addresses referred to said tribunal always as a court. aking before the Kewanee Club of Kansas City, shortly after actment of this law, the governor touched upon the constitu-ty thereof, which was then, as now, a question in the minds reat many, and stated that there was a constitutional authority e enactment of this law, for the Constitution provided that liciary of Kansas should consist of a Supreme Court and such ourts, inferior to the supreme court, as the legislature might, ime to time, ordain and establish.

mis-naming of this act, we submit, is a deliberate attempt lead both the legislators and the people of the state as to e character of the tribunal therein sought to be erected. The nd confidence of the people of this state in its courts is well ized and equally well recognized is the justifiable lack of f the people of this state in boards and commissions. The f Industrial Relations should not be permitted to borrow the of prestige and repute which now rests, well earned, upon rts of this state. The spirit and letter of the Constitution has agrantly violated. In none of the definitions of a Court, set "Words and Phrases Judicially Defined," was there a consti-l provision such as this under consideration.

ich vs. Aldrich, 8 Metcalf (Mass.) 102, cited by the Court, holds that a Board of Assessors is a Court within the mean-the Statute of the State and no constitutional provision is nder consideration. But even in that case, it is said, "But er may be the strict technical meaning of the word "court," not doubt that a Board of Assessors was intended to be in-by that term." We respectfully submit that the Massa-

chusetts case, just cited, should not be given the weight of a Kansas authority on this proposition.

153 We respectfully submit that the Supreme Court of Kansas has not given just and proper weight to this objection, advanced by the defendants and we respectfully urge the Court to grant a re-hearing to the end that this matter may be more fully and completely presented by counsel and given further consideration by this Court.

III.

The court, in deciding that the section of the court of industrial relations law relating to the district court is valid, has overlooked previous well-established decisions of this court. We do not think that the Supreme Court has properly understood the objection made by the defendants to the validity of that section of the court of industrial relations act granting jurisdiction to the District Court to compel the attendance of witnesses before the Court of Industrial Relations.

The jurisdiction of the District Court to make such an order as was made in this case is clearly not inherent in such court. Neither the power to make the order nor the procedure provided in the Court of Industrial Relations Law is warranted without reference to this new act. It is contended therefore that part of this act viz Section 11, is devoted to a subject which is not described in the title to the act. This subject relates to the courts of the state and to special civil procedure and we submit that there is nothing in the title to this act which would lead any one to believe that in the body of the act any part of the civil procedure of the State of Kansas had been altered or in any wise added to. We think that in deciding that this section is described in the title "An Act creating the Court of Industrial Relations and Relating thereto" is a sufficient expression of this subject. This court has overlooked and failed to consider previous decisions of this court among which are the following:

The Statcute in question in State vs. Lewin, 53 Kans. 679, was entitled "An Act in Relation to the State Penitentiary". Section 28 of the Act provided that if a prisoner attempted to escape he should on information filed by the Warden of the Penitentiary, be taken before the District Court of Leavenworth County. The Court in holding that section of the statute unconstitutional, said, we think, it (the statute) void under section

In the instant case the statute is entitled "An Act creating the Court of Industrial Relations * * * and relating thereto"

The Act authorizes and empowers the Court of Industrial Relations "to take proper proceeding in any court of competent jurisdiction to enforce obedience to such summons or subpoena." The Supreme Court holds in the instant case, "The provision in question certainly has relation to the new tribunal

, Article 2, of the Constitution
ause under an Act entitled
An Act in relation to the state
penitentiary" it attempts
4 to establish a system of
special criminal procedure
Leavenworth county for a
ecial class of offenses and un-
rtakes to confer on the warden
the penitentiary the functions
a prosecuting officer in that
urt. This is clearly outside the
ope and purview of the title."
e Commissioners of Sedgwick
unty vs. Baily, 13 Kans. 607,
s an act defining certain boun-
ries of counties. Section 6 pro-
ded that the territory detached
om Sedgwick and made a part
Harvey County shall not be
lieved from its obligations to
y its proportion of all in-
btedness of Sedgwick County.
The Court held the section
nconstitutional, saying, "Who
ould think of looking for any
nd of assessment under such
itle.

Swaze v. Britton, 17 Kans.
5, had under consideration an
t entitled, "An act relating to
taries public." The act in
e of its sections went on to
ovide that in case of protest
commercial paper, notice of
otest might be given by no-
ries public in a certain man-
r. The Court held that this
ovision of law was not ex-
ssed in the title of the act.

and is pertinent to the subject expressed.

The Court of Industrial Relations Act is open to the same objection with respect to the section under consideration, and we might well say, "Who would think of looking for a change in civil procedure under such a title?"

The instant case has reference to a law which relates to the Court of Industrial Relations; Section 11 relates to a subject of civil procedure and to district courts and creates a new and special procedure and confers a new power upon the court.

In view of the foregoing decision, it seems clear that the Court Industrial Relations Law, insofar, at least as Section 11 is con-rned, is not clearly expressed in the title, and the opinion of the urt in holding it valid, is directly opposed to prior decisions of is court and that a re-hearing should therefore be granted in is case so that the prior decisions of this court should be given rther consideration.

IV.

The Court, in deciding that the Clayton Act, (38 U. S. Statutes at large, 730) and the Lever Act (40 Statutes at large, 278) did not affect the present controversy, has misconstrued these acts of Congress.

It is elementary that where the Federal Government has exercised control in cases within its jurisdiction that the state, while at liberty to legislate prior to the assumption of control by the Federal Government, is thereafter precluded. A comparison between the Lever Act and the Clayton Act, and the Court of Industrial Relations Act, will demonstrate that these subjects are considered.

155 Section 20 of the Clayton Act provides, "And no such restraining order or injunction shall prohibit any person or persons, whether single or in concert, from terminating any relation of employment, or from ceasing to perform any work or labor or from recommending, advising, or persuading others by peaceful means so to do; or from attending at any place where any such person or persons may lawfully be, for the purpose of peacefully obtaining or communicating information, or from peacefully persuading any person to work or to abstain from working; or from ceasing to patronize or to employ any party to such dispute, or from recommending, advising, or persuading others by peaceful and lawful means so to do; or from paying or giving to, or withholding from, any person engaged in such dispute, any strike benefits or other moneys or things of value; or from peaceable assembling in a lawful manner, and for lawful purposes; or from doing any act or thing which might lawfully be done in the absence of such dispute by any party thereto; nor shall any of the acts specified in this paragraph be considered or held to

The Court of Industrial Relations Act provides, "it shall be unlawful for any such individual employee or other person to conspire with other persons to quit their employment or to induce other persons to quit their employment for the purpose of hindering, delaying, interfering with, or suspending the operation of any of the industries, employments, public utilities, or common carriers governed by the provisions of this act, or for any person to engage in what is known as "picketing", or to intimidate by threats, abuse, or in any other manner any person or persons with intent to induce such person or persons to quit such employment, or for the purpose of deterring or preventing any other person or persons from accepting employment or from remaining in the employ of any of the industries, employments, public utilities, or common carriers governed by the provisions of this act."

be violations of any law of the United States. (38 Stat. L. 738)".

The Lever Act provides in part as follows: "Sec. 9. (Conspiracy to restrict supply of necessaries, etc.) That any person who conspires, combines, agrees, or arranges with any other person (*a*) to limit the facilities for transporting, producing, manufacturing, supplying, storing, or dealing in any necessaries; (*b*) to restrict the supply of any necessaries; (*c*) to restrict the distribution of any necessaries; (*d*) to prevent, limit, or lessen the manufacture or production of any necessaries in order to enhance the price thereof shall, upon conviction thereof be fined not exceeding $10,000 or be imprisoned for not more than two years, or both. (— Stat. L. —.)"

The comparison above will, I think, be amply sufficient to show this Court that the Kansas Legislation respecting the subject of strikes and picketing has come within the power of the Federal Government and that such exercise of that power as Congress has thought proper has been put forth in the sections above set out.

156 The syllabus of the opinion rendered in this cause is by the court and is therefore an integral part of the opinion of the court and is entitled to as much weight as any other portion of the opinion.

Syllabus one erroneously decides that the legislature can create an administrative body and empower it to investigate conditions in the mining industry and make regulations to insure continuity of production.

By this statement the court permits the legislature to confer upon an administrative body a most extensive legislative power, the power to make rules and regulations to enforce the continuity of production in certain industries. Since it is fundamental that the law making power may not clip itself of one iota of its law-making power by a voluntary delegation of any element of it, the power to enforce the continuity of production conferred upon the Court of Industrial Relations must be found in the act creating said court.

The assertion of the power of the court of Industrial Relations to

enforce continuity of production is upheld as a proper assertion on the part of the legislature of the police power vested in said body. If we concede that it is within the power of the legislature to make rules and regulations to enforce the continuity of production, it nevertheless follows that this power must be exercised in a legal, lawful and constitutional manner, and in no way infringe or violate the rights of the wage earners of the State of Kansas as those rights are protected and safe guarded by the constitution of the State of Kansas and the Constitution of the United States.

The question then arises:

Can the Legislature enforce continuity of production in the manner and form attempted in the Court of Industrial Relations Act?

This leads us to the question as to the provisions of the act creating the Court of Industrial Relations for the enforcement of the continuity of production. And it must be remembered that it is under these provisions of the Industrial Court act that the Industrial Court must take action to enforce continuity of production if it is to be enforced according to the power granted said court by the legislature.

The provisions made by the act creating the Court of Industrial Relations for enforcing continuity of production, are:

I.

1561_2

Section 17. "It shall be unlawful for any such individual employes or other person, to conspire with other persons to quit their employment or to induce other persons to quit their employment for the purpose of hindering, delaying, interfering with, or suspending the operation of any of the industries, employments, public utilities or common carriers governed by this act.

II.

Section 17. "It shall be unlawful for any person to engage in what is known as picketing."

III.

Section 9. "If, during the continuance of any such employment the terms or conditions of any such contract, or agreement, hereinafter entered into, are by said court, in any action or proceeding properly before it under the provisions of this act, found to be unfair, unjust or unreasonable, said Court of Industrial Relations may by proper order so modify the terms and conditions thereof that they will be and remain fair, just and reasonable, and all such orders shall be enforced as in this act provided."

IV.

Section 15. "It shall be unlawful for any person, firm or corporation to discharge any employee or to discriminate in any way against any employee because of the fact that any such employee may testify

as a witness before the Court of Industrial Relations, or shall sign any complaint, or shall be in any way instrumental in bringing to the attention of the Court of Industrial Relations any matter or controversy between employers and employees, as provided herein."

V.

Section 8. "The Court of Industrial Relations shall order such changes, if any, as are necessary to be made in and about the conduct of said industry, employment, public utilities or common carrier in the matter of working and living conditions, hours of labor, rules and practices, and a reasonable minimum wage, or standard of wages."

157 Now it is clear that Provision One, as above quoted, prohibits by its terms the collective secession of work by the employees of any industry. And by so providing it violates and destroys the freedom of contract on the part of the employees, guaranteed to them under the 14th Amendment to the Constitution of the United States. This provision is destructive of the employees' right to collectively bargain, as it takes from them the right to refuse to bargain at all, without which they possess no power to enforce their demands. It is in fact a plain prohibition against a strike on the part of the employees of any industry embraced within the terms of this act and is therefore a denial of the well recognized right of employees of any industry to strike or quit work collectively. And, as such it invades the personal liberty as well as the right of property guaranteed under the 5th Amendment to the Constitution of the United States, as well as the 14th Amendment to the Constitution of the United States.

In the case of Adair v. United States, 208 U. S. 441, the court in passing upon the constitutionality of an act of Congress which sought to restrict the rights of an employer to freely contract or to refuse to contract with any particular class of individuals, used the following language:

"Such liberty and right embraces the right to make contracts for the purchase of the labor of others and equally the right to make contracts for the sale of one's own labor; each right, however, being subject to the fundamental condition that no contract whatever its subject matter, can be sustained which the law upon reasonable grounds forbids as inconsistent with the public interests or as harmful to the public order, or as detrimental to the common good."

The court continuing, quoted with approval, Mr. Cooley in his treatise on torts, p. 278, who says:

"It is a part of every man's civil rights that he be left the liberty to refuse business relations with any person whomsoever, whether the refusal rests upon reason, or is the result of whim, caprice, prejudice or malice. For this reason neither the public nor third persons have any legal concern. It is also his right to have business

relations with any one with whom he can make contract and if he is wrongfully deprived of his rights by others, he is entitled to redress."

158 Under the provisions of the Industrial Court Act it is plain that the rights of the individuals to voluntarily associate themselves and contract or refuse to contract, if they are unable to contract, in a way that they themselves feel is advantageous, is denied them.

As is stated by Cooley on torts, p. 81.

"The right to refrain from contracting is an absolute right which every man can exercise, justly or unjustly, for a good purpose, 'maliciously' in the proper sense of the term, or benevolently, nor can the absence of commendable motive on the part of the party exercising his rights be the legal substitute or equivalent for the thing amiss which is one of the necessary elements of the wrong."

Thus it clearly appears that the statement that every man whether skilled laborer, mechanic, farmer or domestic, may work or refuse to work, singly or collectively, for any company, or with any individual, at his own option without any explanation as to his refusal. The only limitation there is on this right or that can be legally placed upon this right is the limitation of contract freely entered into by the individual.

As was said in Master Builders' Assn., 16 Colo. Apps. 25; 62 Pac. 782:

"This right is one of which a person cannot be deprived even by the legislature itself."

This provision is therefore in violation of constitutional guarantees to the workers and is therefore an illegal and unlawful method of enforcing continuity of production and has been so held in State v. Haun, 61 Kansas 146; State v. Wilson 61 Kansas p. 32.

Provision II, quoted above, is an unlawful infringement of the right to peacefully picket, which right was specifically recognized by the Federal Congress when, looking to the proper enforcement of this provision of the Constitution it passed the Clayton Act (Act of Oct. 15, 1914, 2 U. S. Comp. Statutes, Ann. 1916, pg. 1964.) which declares the right of peacefully picketing and affirms the right of laboring men to persuade others not to take their places or patronize their employers when they are engaged in a dispute concerning the terms or conditions of their employment. This
159 provision, therefore, for enforcing continuity of production is invalid and unlawful and is without the power of the legislature to exercise or of the courts to enforce.

Provision III, which provides for the revising, regulating and controlling the contracts of employment made by the laboring men of the State of Kansas is again in violation of the provisions of the 14th Amendment to the Constitution of the United States and is pointed out in appellant's brief, p. 24, is an attempt to exercise a power not possessed by the legislature.

As was held by Justice Smith in State v. Haun 61 Kansas 146. Provision No. 3 is again in violation of the 14th Amendment as an attempt to destroy the rights of individuals to contract, collectively or separately, as they may desire, for such wages and compensation as they can secure. This provision, by its terms gives to the Industrial Court the power to fix and regulate the wages of the employee, which action was by the court, in State v. Wilson, 61 Kansas p. 32, held to be invalid and unlawful and in expressing this opinion the court used the following language:

"The court of appeals had no doubt of the invalidity of its provision relating to the regulation of wages. That court said, as we have already stated, we should hold this law to be invaild if it in its terms expressed such purpose, (the regulation of wages) but neither the title of the act nor the act itself directly or indirectly purports to relate to the matter of wages." (See printed brief of appellants, p. 26.)

Provision IV is a further attempt to limit and control the right of contract and to arbitrarily control the discretion of the individual in selecting his employees, which provision is a violation of the 14th Amendment of the Constitution and is in conflict with the adjudged cases of the State of Kansas as is indicated in the case of Coffeyville Vitrified Brick & Tile Co. v. Perry, 69 Ke. p. 297.

It is clear this limitation upon the employer to select for himself his employees by any method or upon any plan that to him may seem proper, is a violation of the freedom of contract, for, as was said by Judge Snyder in the case of State v. Goodwell, 33 Va. 160 170, in considering a question of this nature:

"A person living under the protection of this Government has the right to adopt and follow any lawful and industrial pursuit, not injurious to the community, which he may see fit. And as incidental to this is the right to labor or employ labor, make contracts in regard thereto upon such terms as may be agreed upon by the parties, to enforce all lawful contracts, to sue, to give evidence and to inherit, purchase, lease, sell and convey property of every kind. The enjoyment or deprivation of these rights and privileges constitutes the essential distinction between freedom and slavery, and liberty and oppression. The vocation of employer as well as that of employee is his property. Depriving the owner of property or one of its attributes is depriving him of his property under the provisions of the Constitution."

Again as was said in Purbis v. Local, 500 U. B. of Carpenters and Joiners, 63 Atl.:

"The right of the workman to freely use his hands and to use them for just whom he pleases, upon such terms as he pleases, is his property; and so in no less degree is a man's business in which he has invested his capital. The right of each—employee and employer—is an absolute one, inherent and indefeasible of which neither can be deprived, not even by the legislature itself. The protection of it,

though as old as the common law, has been reguaranteed in our Bill of Rights."

Now since the legislature cannot divest itself of legislative power by conferring such power on a commission, it must be held that such power, methods and means, at the command of the Court of Industrial Relations for enforcing continuity of production, are such powers and means as are specifically set out in the act creating the Industrial Court and none other.

Now since these means of enforcing continuity of production are invalid and unlawful, as shown above, being in conflict with Constitutional provisions, therefore, the decision that the Industrial Court has power to enforce continuity of production is erroneous.

In other words, the Industrial Court cannot enforce continuity of production and the legislature cannot authorize it to enforce continuity of production by methods and means that violate or destroy constitutional rights and liberties. The abstract question as to the right of the Industrial Court to enforce continuity of production is not before the court. The question before the court and the question decided by the court in its decision that the Industrial Court can enforce continuity of production is that the Industrial Court can enforce continuity of production in the manner and form prescribed
in the act creating the Industrial Court. Consequently the
161 decision of the court that the Industrial Court can enforce continuity of production is erroneous, for such decision necessarily includes the finding that the Industrial Court can do all those acts directed by said Industrial Court Act to be done, to enforce continuity of production.

By such a decision the court upholds all provision of the act for enforcing continuity of production, notwithstanding the violation of the Constitution and former decisions of this court.

On the other hand if the court does not so decide it does not decide anything for to decide that continuity of production may be enforced in a lawful manner is to decide that the legal acts of the legislature are lawful.

Therefore, in order that the court may properly and definitely state its decision with respect to the power of the legislature to enforce continuity of production in the manner prescribed by the Industrial Court Act and thereby prevent misconception and misconstruction as to the powers of said court a rehearing should be granted.

162 The court, in holding that section 28 of the Industrial Court Act compels the court to give effect to the valid portions of said act irrespective of whether or not the valid portion would carry out the purpose for which said act was passed, has overlooked important cases binding on this court.

The court has decided that the declaration on the part of the legislature that:

"If any section or provision of this act shall be found invalid by any court, it shall be conclusively presumed that this act would have

en passed by the Legislature without such invalid section or pro-
sion and the act as a whole shall not be declared invalid by reason
the fact that one or more sections or provisions may be found to be
valid by any courts;" (Laws 1920, *Chapter* 29, Section 38);

a provision valid and binding on the court, in determining how far
he invalidity of a portion of the act might affect the remainder.
he court in passing upon this point says,

"The rule is familiar that a part of a statute which is unobjection-
ble in itself may be enforced notwithstanding another part is ad-
udged unconstitutional, if it appears that the void portion was not
n inducement to the enactment of the rest—that the Legislature
esired the unobjectionable part to become a law irrespective of the
alidity of the remainder. Here the express declaration disposes of
ny possible doubt that might otherwise exist as to the legislative in-
ent and required the court to give effect to all provisions of the
tatute that do not in themselves violate some constitutional pro-
ision."

It is clear, under the authorities, and binding on this Court, that
he Court is in error in the above finding in two respects. First, in
olding that such a blanket provision inserted by the Legislature in
bill can thereby supplant the judicial determination by the Court
of the effect of the partial invalidity of a bill on the bill
163 as a whole, or make by the insertion of such a provision the
effect of partial invalidity other or different than it otherwise
would have been had said provision been omitted, or place a mandate
pon the Court which it must obey by declaring enforcible a portion
f an act which, taken alone, would be a nullity if enforced.
Second, that it is the legislative intent, with reference to a valid por-
ion of a bill separated from the invalid portion that determines the
ffect of the invalid part upon the whole act, rather than the relation-
hip of the invalid portion to the valid portion and the possibility of
he two portions to standing alone.

It is clear the court erred in the two respects above named as to
he duty placed upon the Court by the section above quoted, as well
s in respect to the rule governing their decision in determining the
ffect of the partial invalidity of said act. It is fundamental that
t is a matter of judicial determination whether the invalid portion
f an act is such an integral part of the whole as to invalidate the
whole act. And the mere declaration of the Legislature of its intent
r desire cannot compel the Court to give effect to some minor pro-
ision after the body of the act has been held to be invalid.

The Court has, in effect, held in this connection that the Legisla-
ure by its declared intent, has placed a duty upon the Court which
ompels it to give effect to any portion of the act, however insignifi-
ant and however far it may be removed from the real purposes for
which the act as a whole was passed, if said portion is not in itself
bjectionable.

The rule by which the effect of partial invalidity upon a statute as
whole should be determined has been concisely stated by Brewer,

Justice, in the case of C. B. U. P. R. R. Co. v. A. T. & S. F. R. R. Co. 28 Kansas 457, and in passing upon this point, the court said:

"And now we remark in the first place that while it is undoubtedly true that a statute may be constitutional in part and unconstitutional in part, yet as a general proposition it has its limitations. The mere fact that one part, standing alone, would be within the scope of the legislative power does not prove that it can be upheld when coupled with other matter. If such other matter conflicts with the constitution and must fall, then the constitutionality of the first depends upon the extent and closeness of its connection with the second. If the first be conditioned upon the second or it is apparent that the Legislature would not have enacted the first but for the second, that the latter was, as it were, an inducement to the former and that only by virtue of a concurrence of the two would it be presumed that in the judgment of the law-making power, the respective rights of antagonistic parts would be preserved then with the fall of the second falls also the first. It is not enough to say that the Legislature might have legally enacted the first alone. When it has coupled the two together, the failure of the latter invalidates the former; and this for the reason that because of the mutuality of the two, the relation inter esse, the dependence of one part upon the other, the correspondence of blessing and burden, it must be presumed that the one was an inducement to, or a condition of the other."

The rule is similarly stated by Cooley in his work on Constitutional Limitations, page 179, as follows:

"And if they are so mutually connected with and dependent on each other as conditions, considerations or compensations for each other, as to warrant the belief that the Legislature intended them as a whole, and if all could not be carried into effect, the Legislature would not pass the residue independently, then if some parts are unconstitutional or the provisions which are thus dependent, conditional or connected, must fall with them."

them.

Again Ward, et al., v. The Mayer, 2 Gray 84, Chief Justice Shaw speaking for the Supreme Court of Massachusetts, states the rule as follows:

"Yet other parts of the same set may not be obnoxious to the same objections and therefore have the full force of law in the same manner as if these several enactments had not been made by different statutes. But this must be taken with this limitation that the parts so held respectively constitutional and unconstitutional must be wholly independent of each other."

The statement by Justice Brewer of the rule as to the effect of partial invalidity of statutes on the whole act has been cited with approval in Conklin v. Hutchinson, 65 Kansas 584 and again in Te

aph Company v. Austin, 67 Kansas 214. In the latter case the atement of Bartholomew, Chief Justice, speaking for the Supreme urt of North Dakota, in Martin v. Tyler, 4 North Dakota 278. as cited with approval, which statement is as follows:

"It is our duty to sustain statutes in their entirety when possible nd to that we must indulge all the reasonable presumptions in favor f their constitutionality. But when a statute has been once enas- ılated, these presumptions no longer obtain against the Court or ie remainder. It then should be manifestly clear that the remain- ıg portion can stand by itself and that the Legislature did not in- end that such portion should be controlled and modified in its con- ruction and effect by the rejected part."

Now it is clear from the above authorities that it is the duty of the ourt to determine from the provisions of the act itself, the purpose or which it was enacted. Having determined the purpose for which the act was placed on the statute books, how can it be said that the mere declaration by the Legislature contained in the act passed, shall control or govern the decision of the court in letermining whether the invalidity of one portion of the act destroys he purpose for which it was enacted?

In considering the provisions of the Industrial Court Act, we are orced to the conclusion that the act was passed for the following urposes:

First, to investigate industrial conditions.

Second, to prevent collective cessation of labor in industries named.

Third, to abolish picketing.

Fourth, to fix wages and hours.

Fifth, to fix rates.

Sixth, to control working conditions and to enforce its orders and ecrees with respect to the above matters.

Now, can it be said by the wildest stretch of imagination that the Legislature would have passed the Industrial Court Act, if all the above functions enumerated, except the first, were denied it? Or stronger still, if all the above functions were denied it and the pro- vision and the only provision of the act found to be valid is that cre- ating the court. Now under the decision of the court in respect to partial invalidity, the Court would give effect to that portion of the act creating the Court even though each and every function or duty contained in the act was found to be invalid. This in itself shows that the decision of the court in respect to provisions of the act re- lating to partial invalidity is erroneous, for, as the above cited au- thorities clearly show, the purpose of the act must be determined by the Court and it must likewise be determined by the Court whether such partial invalidity as is found to exist destroys the purpose of the whole act, and if so the whole act must fall. It is obvious that the

Legislature did not intend to do a vain thing in passing th
167 Industrial Court Act. Nevertheless, under the holding of th
Court, force and effect would be given to this act, even thoug
it developed that less power and authority is by said act conferred o
the Industrial Court than was formerly possessed by the Utilit
Commission. Assuming the above statement of facts to be tru
could it then be said that a decision of the Court, placing in effe
this act, would be carrying into effect the intention of the Legislatur
their statement that the partial invalidity should not invalidate th
whole act, notwithstanding?

It is apparent that the act as a whole must be considered by th
Court without reference to the provision concerning partial validit
to determine whether there is such inter-dependence between th
valid and invalid portions as to destroy the whole act. Therefor
the court erred in holding that the mere declaration of the Legisl
ture that the invalidity of one or more sections should not affect th
remainder, is controlling, and thereby relieves the Court of the n
cessity of determining the effect of partial invalidity upon that se
tion of the act which is directly involved in the case at bar.

It is clear that the purpose of the Industrial Court Act is in a fair
comprehensive way, stated in the six purposes, above enumerate
and since every one of the sections, giving the power to carry o
these purposes, has been challenged as unconstitutional, the Cou
erred in failing to determine the constitutionality or the unconstitu
tionality of each and every one of these sections. For, since th
inter-dependence and relationship of the valid and invalid portion
of the act is controlling and not the declared intention of the Legis
lature, as the above cited authorities clearly show, the only way
which the Court could determine the validity or invalidity of th
specific section involved in this case would be by determining th
constitutionality of every section challenged. For it is apparent tha
it is impossible to tell whether the invalid or unconstitutiona
168 parts of said act are so numerous or such an integral part
the whole act as to invalidate the entire act, until the invali
part is determined by judicial decision. Therefore, as above state
the court erred in failing to pass on the constitutionality of eve
section challenged and in consequence of this failure, a re-hearin
should be granted.

The holding of the court that the act creating the Court of I
dustrial Relations is not void on the ground that it commingles le
islative, executive, and judicial powers is in conflict with numero
decisions of this court.

The court in Syllabus 8 holds

"The act creating the Court of Industrial Relations is held not
be void * * * on the ground that it commingles in one bo
executive, legislative and judicial functions."

In another portion of the opinion of this court rendered in th
cause the court has declared the Court of Industrial Relations to
an administrative body.

"The occasion for the aid of the district court being invoked to require the attendance of witnesses before the court of industrial relations arises from the well understood fact that the latter body in spite of its name is an administrative and not strictly a judicial tribunal."

It will be conceded we believe, that nothing is more firmly fixed or universally accepted than the absolute necessity for the strict division of the legislative, executive and judicial powers of our government. For as was said by Mr. Justice Allen in re Davis, 58 Kan. 368

"It is not asserted that the constitution does not make a valid and effectual division of the powers of government into executive, legislative and judicial departments, nor is the wisdom of such a
169 division of powers questioned; * * * it has been generally if not universally accepted as the best and safest division of powers yet devised by man, and is recognized as firmly established by all writers on the constitution. * * * The legislature enacts general rules for the guidance of all departments of the government. It levies taxes and directs the expenditures of the money raised thereby, but it executes no law. The judiciary declares the law, and directs as to its application to controversies that arise. * * * The fundamental law embodied in the constitution binds all departments of the government and fixes the limits of their powers. To its mandates all must yield obedience; for it is superior to any and all agencies created under it."

Now the separation of powers being accepted, as it must be, as the law of this state we are immediately led to a consideration of the provisions of the industrial court act, for the purpose of ascertaining whether said act by its terms confers legislative, executive and judicial powers. If so, the act is void, and the holding of this court out of harmony with the former decisions of this court as well as contra to all well considered opinions of all the courts of this country.

Section 9 of the act creating the court of industrial relations reads as follows:

"If during the continuance of any such employment, the terms or conditions of any such contract or agreement hereinafter entered into or by said court in any action or proceeding properly before it under the provisions of this act, found to be unfair, unjust or unreasonable, said court of industrial relations may by proper order so modify the terms and conditions thereof so that they will be and remain fair, just and reasonable."

170 It is clear that the *divisions* of section — convey judicial power. In this one section is conveyed the power to pass upon contracts that have been entered into and to determine whether the terms of said contract are unfair, unjust or unreasonable and in addition to modify by proper order the terms thereof so as to make it "fair, just and reasonable."

For example suppose a contract was entered into by and between the mine workers and the mine operators on May 1st, 1920, and

on May 20th, 1920, the fairness and reasonableness of said contract is called in question by a proceedings properly brought before the court of industrial relations and the court of industrial relations passes on the fairness and justice of said contract and decides its terms are fair and just. By what method of reasoning can it be said that the court of industrial relations has not exercised as plain, clear and unadulterated judicial functions in respect to a judicial question as it is possible for any court to exercise.

By what method of reasoning can it be said that the court of industrial relations by such action was performing an administrative or legislative function? This section does not set out general limitations to govern the making of contracts in the future but expressly conveys to the court of industrial relations the right and power to pass upon the validity of contracts already entered into and to reform or cancel said contract or take such action as will produce substantial justice between the parties or in the words of the statute make said contract "fair, just and reasonable."

That is is a judicial function of the court (exercised by the equity side) to pass upon the equitable nature of a contract when the question of its validity is raised by a demand for reformation or cancellation cannot be doubted, therefore citations of authority in this respect would be entirely out of place.

Section 9, above quoted, and the powers therein conveyed are so similar to those conveyed by section 8 of the act creating the
171 court of visitation that comparison of the two are warranted. Section 8 of the act creating the court of visitation reads:

"The court of visitation shall have power and jurisdiction throughout the state—

1st. To try and determine all questions as to what are reasonable freight-rates, switching and demurrage charges, and other charges connected with the transportation of property between points in the state."

Justice Smith in State v. Johnson, 61 Kan. 814, in declaring the invalidity of the act creating the court of visitation said:

"The first paragraph of section 8 gives authority 'to try and determine all questions as to what are reasonable freight-rates, switching and demurrage charges, and other charges connected with the transportation of property between points in the state.' This, together with other sections, as we shall see, is a grant of judicial power to the court to determine what are reasonable freight-rates for services already rendered."

Now can it be said with the slightest show of reason that the determination of the reasonableness of a freight-rate for services already rendered is any more of a judicial power than the determination of the reasonableness of a contract already entered into.

As is indicated in section 3 of the industrial court act the jurisdiction of said court is not definitely fixed, therefore the very important and fundamental judicial question of determining its own jurisdic

ion is left to the determination of the industrial court. (See Appellants' printed brief, p. 16.)

Now section 12 of the industrial court act provides:

"In the case of the failure or refusal of either party to said controversy to obey and be governed by the order of said court of industrial relations, then in that event said court is hereby
72 authorized to bring proper proceedings in the Supreme Court in the State of Kansas to compel compliance with said order; and in case either party to said controversy should feel aggrieved at any order made and entered by said court of industrial court of relations, such party is hereby authorized and empowered within ten days after service of such order upon it to bring proper proceedings in the Supreme Court of the State of Kansas to compel said court of industrial relations to make and enter a just, reasonable and lawful order in the premises."

If it is held that this action of the industrial court in passing upon the reasonableness, fairness and justness of a contract is a legislative or administrative function and in no manner the exercise of a judicial function by a judicial tribunal then by what theory can the authority sought to be vested in the Supreme Court by Section 12 be maintained.

The power vested by section 12 in the Supreme Court cannot be said to come within any one of the three specific classes of cases. (Art. 3, Sec. 172, Constitution of the St. of Kan.) in which the Supreme Ct. has original jurisdiction. (See Appellants' printed brief, p. 12.)

Since this power cannot be held to come within the original jurisdiction of the Supreme Court it must be appellant jurisdiction, if section 12 is to be given any force or effect whatever.

Now since the action or decision of an administrative body cannot be judicial it is clear that it cannot form a proper basis upon which an appeal can be taken to the Supreme Court. This point was specifically passed upon by Kingman, Chief Justice in Auditor of State v. A. T. & S. F. Ry. Co. 6 Kan. 505, and in passing on said point he used the following language:

73 "It (Supreme Court) has original jurisdiction in three specific classes of cases which it possesses independent of any legislation and such appellant jurisdiction as may be provided by law. The jurisdiction of the court, under this last provision is wholly dependent upon the will of the legislature. It may be enlarged or restricted as the legislature may prescribe but in all its acts the legislature is still under the restriction that the jurisdiction conferred must be appellant not original. The legislature is further restricted to appeals in their nature and essence judicial in their character. It would be absurd to claim that it is in the power of the legislature to clothe this court (Supreme Court) with authority to review acts purely executive in their character by giving an appeal therefrom to this court. * * * Yet when the decision is made an appeal could not be given to this court for that would be giving this court

executive powers as well as judicial—a power as dangerous to good government as it is subversive of the constitution, which has carefully kept separate the executive, legislative and judicial departments of the government, to the end that this may be a government of laws and not of men."

Continuing Justice Kingman said:

"The term then appellant jurisdiction as used in the constitution has some other meaning than that there should be merely an appeal from some decision or act of some officer of the state. The constitution of the United States contains a clause of similar import which has been the subject of comment and decision by the Supreme Court of the United States and the substance of their decision is thus stated by Judge Story in his commentaries on the constitution,
p. 1761. "The essential criterion of appellant jurisdiction is
174 that it revises and corrects the proceedings in a cause already instituted and does not create that cause. In reference to judicial tribunals an appellant jurisdiction necessarily implies that the subject matter has been already instituted and acted upon by some other court, whose judgment or proceedings are to be revised. To operate at all then under the constitution of the United States it is not sufficient that there has been a decision by some officer or department of the United States; It must be one clothed with judicial authority and acting in a judicial capacity."

Crane v. Giles, 3 Kan. 54.

In view of the above it is clear that the decision of the court of industrial relations must be a judicial decision and the court of industrial relations must be a judicial body if the proceeding provided for in section 12 can be had in the Supreme Court. If the decisions of the industrial court are non-judicial no review of the actions of the industrial court can be had in the Supreme Court as provided in Section 12 in which case due process of law guaranteed by the 14th Amendment of the Constitution of the United States is denied and as a consequence the whole act is invalid. If on the other hand the actions of the industrial court are held to be judicial the whole act is void because it unites in one body administrative and judicial functions contrary to the well settled law of the State of Kansas. Therefore under any possible view of the provisions of this act there is a commingling of legislative, judicial and executive functions in consequence of which a rehearing should be granted to the end that the settled law of the country and the state of Kansas may be maintained.

It is also quite clear that the sections referred to in appellant's printed brief on page 43 specifically confer on the court of industrial relations executive power, the power to enforce or carry out the provisions of legislation enacted by the legislative branch of the government. These provisions for executive action for the enforcement of the industrial relations act show a clear direct violation of the constitutional provisions and the law of Kansas
175 as above set out. Therefore, we respectfully urge that a

hearing be granted to the end that the decision heretofore rendered may be harmonized with the former decisions of the State of Kansas and the constitution of said State and the Constitution of the United States.

Respectfully submitted,

REDMOND S. BRENNAN,
Attorney for Defendants.

[Endorsed:] 23013. Copy petition for rehearing.

176 Be it further remembered, that afterwards on the 1st day of September, 1920, the same being one of the regular judicial days of the July, 1920, Term of the Supreme Court of the State of Kansas, said court being in session in its court room in the City of Topeka, the following proceedings among others was had, and remains of record in the words and figures as follows, to-wit:

177 In the Supreme Court of the State of Kansas, Wednesday, September 1, 1920.

No. 23013.

STATE OF KANSAS, Appellee,

vs.

ALEXANDER HOWAT, AUGUST DORCHY, THOMAS HARVEY, ROBERT B. FOSTER, and THOMAS CUNNINGHAM, Defendants.

Journal Entry Denying Rehearing.

Now comes on for decision the petition for a rehearing of this cause, and thereupon, it is ordered that said petition for rehearing be denied.

178 In the Supreme Court of the State of Kansas.

No. 23013.

THE STATE OF KANSAS, Appellee,

vs.

ALEXANDER HOWATT, AUGUST DORCHY, THOMAS HARVEY, and ROBERT B. FOSTER, Appellants.

I, D. A. Valentine, Clerk of the Supreme Court of the State of Kansas, do hereby certify that the above and foregoing is a true, full and complete transcript of the record and proceedings had in the above entitled case, and also of the opinion of the court rendered thereon as the same appear on file and remain of record in my office.

In testimony whereof, I have hereunto set my hand and affixe the seal of said court at my office in Topeka, Kansas, this 29th da of September, A. D. 1920.

[Seal of the Supreme Court State of Kansas.]

D. A. VALENTINE,
Clerk of the Supreme Court of the State of Kansas.

179 Here follow:

The Original Petition for a Writ of Error.
The Original Assignments of Errors.
The order allowing the Writ of Error, and fixing the amoun of the Bond for appeal at Twenty Thousand Dollars.
The Original Writ of Error.
A copy of the Bond for appeal.
The Original Citation together with the acceptance and waiv of service thereof.

180 In the Supreme Court of the State of Texas.

No. 6173.

ALEXANDER HOWAT, AUGUST DORCHY, THOMAS HARVEY, and ROBERT B. FOSTER, Appellants.

vs.

THE STATE OF KANSAS, Appellee.

Petition for Writ of Error.

Now comes Alexander Howat, August Dorchy, Thomas Harv and Robert B. Foster, Appellants in cause No. 6173, and rep that on the 17th day of July, 1920, a final judgment was duly e tered by the Supreme Court of the State of Kansas, affirming t judgment and sentence entered by the District Court of Crawfo County, Kansas, in a contempt proceeding wherein the State Kansas upon the relation of W. L. Huggins, presiding judge of t Court of Industrial Relations, and the Court of Industrial Relatio were plaintiffs against Alexander Howat, August Dorchy, Thom Harvey and Robert B. Foster, defendants, which judgment a sentence was in favor of the plaintiffs and against the defendants.

That this action was brought against the defendants as being contempt of an order of the District Court of Crawford Coun Kansas, commanding said defendants that they be and appear bef the Court of Industrial Relations and there to testify in a certa matter wherein the Court of Industrial Relations was attempting exercise the powers assumed to be possessed by said court to regul and control hours, wages, living conditions and the right to str or to refrain from striking; the right to work or to quit working,

so far as these matters applied to men engaged in the mining
181 industry in and about Crawford County, in the State of Kansas.

The defendants herein are officials of the United Mine Workers of the World, an association commonly known as a labor union. These defendants declined to appear before the said Court of Industrial Relations, asserting their constitutional right to refrain from recognizing the court in any manner whatsoever. The defendants in their answer filed in this cause in the District Court of Crawford County averred that the proceeding was a violation of the constitutional rights of these defendants as guaranteed by both the State and the Federal Constitution, and averred that the act creating the Court of Industrial Relations and the proceedings being resorted to in this cause violated the constitutional right and privilege of free speech and personal liberty, as guaranteed in and by the 14th Amendment of the Constitution of the United States, as well as the 5th Amendment of the Constitution of the United States and also deprived these defendants of their liberty and property without due process of law and abridged their privileges and immunities as citizens of the United States.

And your petitioners aver that in their answer and defense made to the complaint of the appellants, they expressly charged that they had the constitutional right and privilege aforesaid, and that the action of the appellants was illegal and unlawful in that it compelled the defendants herein to appear and testify before a non-judicial and illegally constituted body.

182 Your petitioners further aver that the Court of Industrial Relations, acting under the supposed authority and power vested in it by the act creating the Court of Industrial Relations is an illegal and unlawful body for the reason that said act by its terms and provisions violates the provisions of the Constitution of the United States laws enacted in pursuance thereof, as well as the Constitution of the State of Kansas, and the statutes of said state.

Your petitioners further aver that in their answer and defense made to the complaint of the appellants, they expressly charged that the act creating the Court of Industrial Relations was in violation of the Constitution of the United States, and therefore unconstitutional and void for the reason that in the powers conferred upon said Court of Industrial Relations by the said legislative enactment, legislative, judicial and administrative functions are commingled and interwoven in a manner violative of the constitutional requirements, that the three great departments of government, namely, the Legislative, Executive and Judicial Departments, and the powers and duties of each be exercised independently.

Your petitioners further aver that the act creating the Court of Industrial Relations, known as Substitute for Senate Bill No. One, was and is unconstitutional and void for the reason that said legislative enactment violates Section 21 of Article 4 of the Constitution of the United States.

And your petitioners further aver that in their answer and defense made to the complaint of the appellants they expressly charged that

the Court of Industrial Relations Act violated Article One of the Amendments to the Constitution of the United States, known
183 as the First Amendment.

Your petitioners further aver that in said answer it was expressly charged that the act creating the Court of Industrial Relations violated Article Five of the Amendment of the Constitution known as the Fifth Amendment, as well as Section One of Article Thirteen of the Constitution of the United States, known as the Thirteenth Amendment. And in addition thereto violated Section One of Article Fifteen of the Amendments to the Constitution of the United States, known as the Fifteenth Amendment.

And your petitioners aver that in their answer and defense made to the complaint of the appellants they expressly charged that the District Court of the State of Kansas had no right or authority to compel the attendance of witnesses before the Court of Industrial Relations for the reason that the court of Industrial Relations was illegally constituted and therefore an unlawful and non-judicial body and consequently the action of the District Court was a mere usurpation of authorities in that it sought to compel the appearance of witnesses before a non-judicial body without right or authority of legislative enactment so to do.

And your petitioners further aver that in their answer and defense made to the complaint of the appellants they expressly denied that they were guilty of violating any valid or lawful order of the District Court of Crawford County, Kansas, or that said defendants or any of them conspired to violate any lawful order of said District Court or that any of them are guilty of holding in contempt any valid and lawful order of said District Court.

184 That at the trial of said cause your petitioners herein expressly made the above and foregoing claims of right and privileges guaranteed to them by the constitution of the United States and the Federal Statutes enacted in pursuance thereof.

That in said suit your petitioners claimed the right, privileges and immunities hereinabove set forth, that notwithstanding these facts the Supreme Court of the State of Kansas decided against the rights, privileges and immunities thus specifically set forth and claimed by the petitioners. And your petitioners show that the said judgment and decision and interpretation of the constitution of the United States and federal statutes enacted under the provisions of said constitution and the denial to them of their right of freedom of speech, personal liberty, and freedom of contract, as herein claimed was and is repugnant to, and contravenes with the Fourteenth Amendment to the constitution of the United States and the laws of the United States of America.

And your petitioners aver that in the aforesaid judgment and proceedings certain errors were committed to the prejudice of your petitioners, all of which will more fully appear from the assignment of error which is filed herein.

Wherefore, your petitioners pray that a writ of error from the Supreme Court of the United States may issue in this case to the Supreme Court of the State of Kansas for the correction of errors

complained of, and that a transcript of the record, proceedings and papers in this cause, duly authenticated by the clerk of the Supreme Court of the State of Kansas may be sent to the Supreme Court of the United States, as provided by law.

Dated this 6 day of September, A. D., 1920.

REDMOND S. BRENNAN,
Attorney for Petitioners and Plaintiffs in Error.

185 [Endorsed:] No. 23013, Original. In the Supreme Court of the State of Kansas. Alex. Howat et al., appellants, vs. The State of Kansas, appellee. Petition for writ of error. Filed Sep. 9, 1920. D. A. Valentine, Clerk Supreme Court. Redmond S. Brennan, attorney for petitioners and plaintiffs in error.

186 In the Supreme Court of the State of Kansas.

No. 6173.

ALEXANDER HOWAT, AUGUST DORCHY, THOMAS HARVEY, and ROBERT B. FOSTER, Appellants,

vs.

THE STATE OF KANSAS, Appellee.

Assignment of Error.

Now come Alexander Howat, August Dorchy, Thomas Harvey and Robert B. Foster, petitioners and plaintiffs in error, by Redmond S. Brennan and —— ——, their attorneys, and in connection with their petition for writ of error show that in the record and proceedings and in the rendering of the judgment and decision of the Supreme Court of the State of Kansas in the above entitled cause manifest error has intervened to the prejudice of these petitioners and plaintiffs in error in this, to-wit:

I.

That the Supreme Court of the State of Kansas erred in affirming the decree of the District Court of Crawford County, Kansas, and directing that the decree and sentence of said District Court be carried into force and effect because said decision of the Supreme Court of the State of Kansas, as aforesaid, deprives the respondents of
187 their rights of personal liberty and freedom of contract, as guaranteed by the Fourteenth Amendment to the Constitution of the United States in that by said decisions of the Honorable Supreme Court of the State of Kansas, it was held that numerous invalid sections of said Industrial Court Act did not destroy or render invalid the whole act, which decision is in conflict with previous decisions of the State of Kansas and the Federal courts of the United States. Therefore the Supreme Court erred in holding

that the decision of the District Court of the State of Kansas did not violate the Fourteenth Amendment of the Constitution of the United States or the laws of the United States.

II.

The Supreme Court of the State of Kansas in its decision in the above entitled cause erred in holding that the violation of said Industrial Court act of the Constitution of the United States and the Federal statutes did not invalidate the whole of said law and erred by such decision and refusal to pass upon the validity or invalidity of the whole act.

III.

The decision of the Supreme Court of the State of Kansas, is erroneous in that said decision is in conflict with and violates the provisions of the act of Congress of October 15th, 1914, 38 U. S. Statutes 738 (The Clayton Act) which act makes peaceful picketing lawful. Whereas, by the aforesaid decision of the Supreme Court of the State of Kansas, the provisions of the Industrial Court act denying the right to peaceful picket, is upheld.

IV.

The decision of the Supreme Court of the State of Kansas in the aforesaid cause is erroneous for the reason that the power
188 vested in the Industrial Court by the said Industrial court act is an encroachment upon the power vested in the United States Government to regulate and control the production and distribution of food and fuel under the Lever Act, is by said decision upheld and maintained.

V.

The decision of the Supreme Court of the State of Kansas is erroneous in that said decision is at variance with the decisions of the highest courts of the states, and the federal appellate courts as to the right of the legislature to interfere with personal liberty, regulation of wages and freedom of contract, under their constitutions and the constitutions of the United States, which questions are of such general importance throughout the land as to merit review and determination by the Supreme Court of the United States.

VI.

The decision of the Supreme Court of the State of Kansas is erroneous for the reason that it violates Section One of Article 13 of the Amendment to the Constitution of the United States, known as the 13th Amendment.

VII.

The decision of the Supreme Court of the State of Kansas is erroneous for the reason that said decision is in conflict with and violates Section One of Article 15 of the Amendments to the Constitution of the United States, known as the 15th Amendment, and thereby violates the rights guaranteed to these defendants by said Constitutional provisions.

VIII.

The decision of the Supreme Court of the State of Kansas is erroneous in that it decides that the commingling of the legislative, executive and judicial powers of government in one body, does not thereby render the act creating said body unlawful, illegal and unconstitutional, which decision is grossly prejudicial to the rights of these defendants, which rights are guaranteed under the constitution of the United States and the form of government established thereby.

IX.

The decision of the Supreme Court of the State of Kansas is erroneous and an encroachment on the constitutional rights of these petitioners because such decision upholds an order of a court of the State of Kansas commanding these petitioners to appear before a quasi-official body and to then and there answer certain questions then to be propounded. Such order was a violation of the rights of Freedom of Speech of these petitioners. The Supreme Court of the State of Kansas, when it declined to pass upon the validity of the Act creating the Court of Industrial Relations when said act was challenged by these petitioners, abandoned the right of Freedom of Speech as guaranteed by the Constitution of the United States.

X.

The Supreme Court of the State of Kansas erred in deciding that the constitutional rights of these petitioners under the Constitution of the United States were not brought into question in the instant case.

XI.

The Court erred in deciding that the Legislature of the State of Kansas was empowered to fix prices, wages, votes, etc. and to erect and appoint a commission to fix such prices, wages, votes, etc. without limitation as to maximum or minimum, to aid continuety of production because the doctrine thus announced is in violation of the guaranties of the Constitution of the United States as being an unlawful restriction on liberty of contract.

Wherefore, by reason whereof these petitioners and plaintiffs in error pray that a writ of error be allowed so that the judgment, decision and decree of the Supreme Court of the State of Kansas may be revised, and the errors, if any, contained in the decree and mandate of said Supreme Court may be corrected, and that said Supreme Court of the State of Kansas be ordered to enter a decree, reversing the decree, judgment and decision of the District Court of Crawford County, Kansas, in said cause.

Dated this 9 day of September, 1920.

REDMOND S. BRENNAN.

191 [Endorsed:] No. 6173, Original. In the Supreme Court of the State of Kansas. Alexander Howat et al., appellants, vs. The State of Kansas, appellee. Assignment of Error. Filed Sep. 9, 1920. D. A. Valentine, Clerk Supreme Court. Redmond S. Brennan, attorney for petitioners and plaintiffs in error.

192 In the Supreme Court of Kansas, —— Term, 1920.

ALEXANDER HOWAT, AUGUST DORCHY, THOMAS HARVEY, and ROBERT B. FOSTER, Plaintiffs in Error,

vs.

THE STATE OF KANSAS, Defendant in Error.

Order Allowing Writ of Error.

On the reading of the Petition of Alexander Howat, August Dorchy, Thomas Harvey and Robert B. Foster, plaintiffs in error, for a writ of error, and assignments of error, and upon due consideration of the record of said cause:

It is ordered that a writ of error be allowed from the Supreme Court of the United States as prayed for in said petition and that said writ of error and citation thereon be issued, served and returned to the Supreme Court of the United States in accordance with law upon condition that the said petitioners and plaintiffs in error, Alexander Howat, August Dorchy, Thomas Harvey and Robert B. Foster, give security in the sum of Twenty Thousand Dollars; that said plaintiffs in error shall prosecute said writ of error to effect and if said plaintiffs in error fail to make their said plea good, shall answer to the defendants in error for all costs and damages that may be adjudged or decreed on account of said writ of error.

And the said plaintiffs in error now presenting a bond in the sum of Twenty Thousand Dollars with the United States Fidelity and Deposit Company of Maryland, as surety, it is ordered that the same be and is hereby duly approved.

In witness whereof I have hereunto set my hand this 9th day of September, 1920.

W. A. JOHNSTON,
Chief Justice of the Supreme Court of the State of Kansas.

[Endorsed:] No. 6173, Original. In the Supreme Court of the State of Kansas. Alex. Howat et al., plaintiffs in error, vs. The State of Kansas, defendant in error. Order allowing writ of error. Filed Sep. 9, 1920. D. A. Valentine, Clerk Supreme Court.

UNITED STATES OF AMERICA:

The President of the United States of America to the Honorable Justices of the Supreme Court of the State of Kansas, Greetings:

Because in the record and proceedings as also in the rendition of the judgment of the plea which is in said Supreme Court of the State of Kansas before you, or some of you, being the highest court of law or equity of the said state in which a decision could be had in said suit between Alexander Howat, August Dorchy, Thomas Harvey and Robert B. Foster, appellants vs. the State of Kansas, appellee wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under the United States, and a decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under said state, on the ground of their being repugnant to the constitution, treaties, or laws of the United States, and the decision was in favor of their validity; or wherein was drawn in question the construction of a clause of the constitution, or of a treaty or statute of, or commission held under the United States, and the decision was against the title, right, privilege or exemption specially set up or claimed under such clause of the said constitution, treaty, statute or commission; a manifest error hath happened to the great damage of the said Alexander Howat, August Dorchy, Thomas Harvey and Robert B. Foster, appellants, as by said complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, do send the record and proceedings aforesaid with all things concerning the same, to the Supreme Court of the United States, together with this Writ so that you may have the same in said Supreme Court in Washington, within 30 days from the time hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the honorable Edward D. White, Chief Justice of the Supreme Court of the United States, the 9th day of September, in the year of our Lord, One Thousand Nine Hundred and Twenty.

[Seal of the District Court U. S., District of Kansas.]

H. CAMPBELL,
Clerk United States District Court, District of Kansas.

W. A. JOHNSTON,
Chief Justice of the Supreme Court of the State of Kansas.

196 [Endorsed:] No. 23013, Original. State of Kansas ex rel. Richard J. Hopkins, att'y gen., appellee, v. Alexander Howatt et al., appellees. United States of America. The President of the United States of America to the honorable justices of the Supreme Court of the State of Kansas, Greetings. Writ of Error. Filed Sep. 18, 1920. D. A. Valentine, Clerk Supreme Court.

197 In the Supreme Court of the State of Kansas.

Case No. 23013.

THE STATE OF KANSAS, Plaintiff,

vs.

ALEXANDER HOWAT, Defendant.

Stay Bond.

Know all men by these presents:

That the undersigned, Alexander Howat, defendant herein, a resident of Crawford County, Kansas, and the United States Fidelity and Guaranty Company hereby acknowledge themselves firmly bound and indebted to the State of Kansas in the penal sum of Five Thousand ($5,000.00) Dollars, for the payment of which we the undersigned bind ourselves, our heirs, executors and administrators.

The conditions of this undertaking and obligation are such that whereas the said defendant Alexander Howat has been convicted in the District Court of Crawford County, Kansas, for "Contempt of Court" and has been sentenced by said Court upon said conviction, and

Whereas, the said conviction has been affirmed by the Supreme Court of the State of Kansas, the said defendant Alexander Howat desires to appeal from the decision rendered against him, the said —— —— in the said cause, to the Supreme Court of the United States.

Now, therefore, if the said defendant Alexander Howat shall well and truly appeal said case and diligently according to Law prosecute said appeal to a final termination in the Supreme Court of the United

States and abide the decision and judgment of the said Supreme Court of the United States, then and in that event this bond shall be null and void; otherwise, to remain in full force and effect.

Witness our hands this 11th day of September, 1920.

[SEAL.] ALEXANDER HOWAT,
Principal.
THE UNITED STATES FIDELITY & GUARANTY CO.,
By F. C. WERNER,
Attorney-in-fact,
Surety.

The above bond approved by me this 28th day of September, 1920.
W. A. JOHNSTON,
Chief Justice.

198 [Endorsed:] No. 23013. The State of Kansas, pl'tf, vs. Alexander Howat, def't. Stay Bond. Filed Sep. 13, 1920. D. A. Valentine, Clerk Supreme Court.

199 In the Supreme Court of the State of Kansas.

Case No. 23013.

THE STATE OF KANSAS, Plaintiff,

vs.

AUGUST DORCHY, Defendant.

Stay Bond.

Know all men by these presents:

That the undersigned, August Dorchy defendant herein, a resident of Crawford County, Kansas, and the United States Fidelity and Guaranty Company hereby acknowledge themselves firmly bound and indebted to the State of Kansas in the penal sum of Five Thousand ($5,000.00) Dollars, for the payment of which we the undersigned bind ourselves, our heirs, executors and administrators.

The conditions of this undertaking and obligation are such that whereas the said defendant August Dorchy has been convicted in the District Court of Crawford County, Kansas, for "Contempt of Court" and has been sentenced by said Court upon said conviction, and

Whereas, the said conviction has been affirmed by the Supreme Court of the State of Kansas, the said defendant, August Dorchy, desires to appeal from the decision rendered against him, the said —— ——, in the said cause, to the Supreme Court of the United States.

Now, therefore, if the said defendant August Dorchy shall well and truly appeal said case and diligently according to Law prosecute

said appeal to a final termination in the Supreme Court of the Unite States and abide the decision and judgment of the said Supreme Cou of the United States, then and in that event this bond shall be nul and void; otherwise, to remain in full force and effect.

Witness our hands this 11th day of September, 1920.

AUGUST DORCHY,
Principal.

[SEAL.]

THE UNITED STATES FIDELITY & GUARANTY CO.,
By F. C. WERNER,
Attorney-in-fact,
Surety.

The above bond approved by me this 28th day of September, 192

W. A. JOHNSTON,
Chief Justice.

200 [Endorsed:] No. 23013. The State of Kansas, pltf., v August Dorchy, deft. Stay Bond. Filed September 13. A. Valentine, clerk Supreme Court.

201 In the Supreme Court of the State of Kansas.

Case No. 23013.

THE STATE OF KANSAS, Plaintiff,

vs.

THOMAS HARVEY, Defendant.

Stay Bond.

Know all men by these presents:

That the undersigned, Thomas Harvey defendant herein, a r dent of Crawford County, Kansas, and the United States Fide and Guaranty Company hereby acknowledge themselves firm bound and indebted to the State of Kansas in the penal sum of F Thousand ($5,000.00) Dollars, for the payment of which we undersigned bind ourselves, our heirs, executors and administrato

The conditions of this undertaking and obligation are such whereas the said defendant Thomas Harvey has been convicte the District Court of Crawford County, Kansas, for "Contemp Court" and has been sentenced by said Court upon said convict and

Whereas, the said conviction has been affirmed by the Supr Court of the State of Kansas, the said defendant, Thomas Har desires to appeal from the decision rendered against him, the —— ——, in the said cause, to the Supreme Court of the U States.

Now, therefore, if the said defendant Thomas Harvey shall and truly appeal said case and diligently according to Law pros

said appeal to a final termination in the Supreme Court of the United States and abide the decision and judgment of the said Supreme Court of the United States, then and in that event this bond shall be null and void; otherwise, to remain in full force and effect.

Witness our hands this 11th day of September, 1920.

THOMAS HARVEY,
[SEAL.] *Principal.*
THE UNITED STATES FIDELITY & GUARANTY CO.,
By F. C. WERNER,
Attorney-in-fact,
Surety.

The above bond approved by me this 28th day of September, 1920.

W. A. JOHNSTON,
Chief Justice.

202 [Endorsed:] No. 23013. The State of Kansas, pltf., vs. Thomas Harvey, deft. Stay Bond. Filed Sep. 13, 1920. D. A. Valentine, clerk Supreme Court.

203 In the Supreme Court of the State of Kansas.

Case No. 23013.

THE STATE OF KANSAS, Plaintiff,

vs.

ROBERT B. FOSTER, Defendant.

Stay Bond.

Know all men by these presents:

That the undersigned, Robert B. Foster defendant herein, a resident of Crawford County, Kansas, and the United States Fidelity and Guaranty Company hereby acknowledge themselves firmly bound and indebted to the State of Kansas in the penal sum of Five Thousand ($5,000.00) Dollars, for the payment of which we the undersigned bind ourselves, our heirs, executors and administrators.

The conditions of this undertaking and obligation are such that whereas the said defendant Robert B. Foster has been convicted in the District Court of Crawford County, Kansas, for "Contempt of Court" and has been sentenced by said Court upon said conviction, and

Whereas, the said conviction has been affirmed by the Supreme Court of the State of Kansas, the said defendant desires to appeal from the decision rendered against him, the said Robert B. Foster in the said cause, to the Supreme Court of the United States.

Now, therefore, if the said defendant Robert B. Foster shall well and truly appeal said case and diligently according to Law prosecute said appeal to a final termination in the Supreme Court of the United

States and abide the decision and judgment of the said Supreme Court of the United States, then and in that event this bond shall be null and void; otherwise, to remain in full force and effect.

Witness our hands this 11th day of September, 1920.

[SEAL.] ROBERT B. FOSTER,
Principal.
THE UNITED STATES FIDELITY & GUARANTY CO.,
By F. C. WERNER,
Attorney-in-fact,
Surety.

The above bond approved by me this 28th day of September, 1920.
W. A. JOHNSTON,
Chief Justice.

204 [Endorsed:] No. 23013. The State of Kansas, plff., vs. Robert B. Foster, deft. Stay Bond. Filed Sep. 13, 1920. D. A. Valtentine, clerk Supreme Court.

205 (Stamp.)

Power of Attorney.

No. 26310.

Know all men by these presents:

That the United States Fidelity and Guaranty Company, a body corporate, duly incorporated under the laws of the State of Maryland, doth hereby constitute and appoint F. C. Werner of the City of Pittsburg, County of Crawford and State of Kansas to be its true and lawful attorney in and for the county of Crawford in the State of Kansas for the following purposes, to wit:

To sign its name as surety to, and to execute, acknowledge, justify upon and deliver any and all stipulations, bonds and undertakings given or required in any judicial action or proceeding brought or pending within the aforesaid county of the said State, or in any judicial action or proceeding over which a United States Court shall exercise jurisdiction.

It being the intention of this Power of Attorney to fully authorize and empower the said F. C. Werner to sign the name of said Company, and affix its corporate seal as surety to any or all of said stipulations, bonds and undertakings, and thereby to lawfully bind it as fully and to all intents and purposes as if done by the duly authorized officers of said Company with the seal of the said Company thereto affixed, and the said Company hereby ratifies and confirms all and whatsoever the said F. C. Werner may lawfully do in the premises by virtue of these presents.

In witness whereof, the said United States Fidelity and Guaranty Company, pursuant to a resolution of its Board of Directors, duly passed on the 11th day of January, A. D. 1904 (a certified copy of

hich is hereto annexed), has caused these presents to be sealed with
s common and corporate seal, duly attested by its Vice-President and
r its Assistant Secretary, this 15th day of July A. D. 1920.

[SEAL.] UNITED STATES FIDELITY AND GUARANTY COMPANY,
By JOSEPH R. WILSON,
Vice-President.
WM. M. PEGRAM,
Assistant Secretary.

06 STATE OF MARYLAND,
City of Baltimore, ss:

On this 15th day of July, A. D. 1920, before me appears Joseph
. Wilson, Vice-President of the United States Fidelity and Guaranty
ompany, of Baltimore City, Maryland, with whom I am personally
equainted, who being by me duly sworn, says that he is the Vice-
resident of the United States Fidelity and Guaranty Company; that
e knows the corporate seal of said corporation; that the seal affixed
o the annexed instrument is such corporate seal; that it was affixed
y order of the Board of Directors of said Company; that he signed
aid instrument as Vice President of said Company by like authority.
The said Joseph R. Wilson further says that he is acquainted with
Wm. M. Pegram and knows him to be the Assistant Secretary of the
nited States Fidelity and Guaranty Company; that the signature
f the said Wm. M. Pegram subscribed to said instrument, is the
enuine handwriting of said Wm. M. Pegram, and was thereto sub-
ribed by like order of the Board of Directors.

My commission expires the first Monday in May, A. D. 1922.

A. D. PATRICK,
Notary Public.

Copy of Resolution.

That whereas, it is often necessary in order to facilitate the busi-
ss of the Company in States other than Maryland, and in the
erritories and in Provinces of the Dominion of Canada and in the
olony of Newfoundland to have stipulations, bonds and under-
kings given or required in judicial actions or proceedings, executed
ith the least delay and with promptness.

Now, therefore be it resolved, that the President or one of the
ice-Presidents and the Secretary or one of the Assistant Secretaries
. and they are hereby authorized to appoint one or more persons
siding in the States other than Maryland and in the Territories
f the United States and in the Provinces of the Dominion of Canada
nd in the Colony of Newfoundland, to sign the name of the Com-
pany as surety to and to execute acknowledge, justify upon
07 and deliver any and all stipulations, bonds and undertakings
given or required in any judicial action or proceeding within
ny one of the said States or Territories, or Provinces of Canada,
Colony of Newfoundland, and that the said person or persons so

appointed are hereby authorized and empowered to sign the na
of the Company and to affix its corporate seal as surety to said sti
lations, bonds and undertakings, and to sign their names thereto
attestation of same, and thereby to lawfully bind the Company to
intents and purposes, as if done by its duly authorized officers, a
the Company through us its Board of Directors, hereby ratifies a
confirms all and whatsoever the said person or persons may lawfu
do by virtue of the authority hereby vested in them.

I, Wm. M. Pegram, Assistant Secretary of the United States Fi
ity and Guaranty Company, do hereby certify that the above a
foregoing is a full and correct copy of a resolution passed by
Board of Directors of the said Company at a regular meeting ther
duly called and held on the 11th day of January, A. D. 190
quorum being present, as the same appears on the records of
Company now in my possession and custody as Assistant Secretary

In witness whereof, I have hereunto set my hand and affixed
seal of the said Company, at the City of Baltimore, Maryland,
15th day of July, A. D. 1920.

WM. M. PEGRAM,
Assistant Secretary

(Endorsed) 26310. Judicial power of attorney from Un
States Fidelity and Guaranty Company to F. C. Werner, Pittsb
Kansas. 7-15-20. Filed September 13, 1920. D. A. Valent
clerk Supreme Court.

208 United States of America to Richard J. Hopkins, Atto
General of the State of Kansas, Greeting:

You are hereby cited and admonished to be and appear at
Supreme Court of the United States at Washington within th
(30) days from the date hereof, pursuant to a writ of error file
the clerk's office of the Supreme Court of the State of Kansas wh
Alexander Howat, August Dorchy, Thomas Harvey and Robe
Foster, appellants, are plaintiffs in error, and the State of Ka
appellee, is defendant in error, to show cause, if any there be,
the judgment rendered against the said plaintiffs in error, as in
said writ of error mentioned, should not be corrected, and
speedy justice should not be done to the parties in that behalf.

Witness the Honorable William A. Johnson, Chief Justice o
Supreme Court of the State of Kansas, this ninth day of Septe
in the Year of our Lord, One Thousand Nine Hundred and Tw

W. A. JOHNSTON,
Chief Justice of the Supreme Court of the State of Kan

Received copy of above citation this 18th day of September,
and service thereof is hereby waived.

RICHARD J. HOPKINS,
Attorney Gene

209 [Endorsed:] 23013. Original. State of Kansas ex rel., Richard J. Hopkins, atty. gen., appellee, v. Alexander Howat et al., appellants. United States of America to Richard J. Hopkins, Attorney General of the State of Kansas, Greetings. Filed Sep. 18, 1920. D. A. Valentine, clerk Supreme Court.

210 STATE OF KANSAS, *ss:*

Supreme Court.

I, D. A. Valentine, Clerk of the Supreme Court of the State of Kansas, do hereby certify that there was lodged with me as such Clerk, on September 13th, 1920, in the above entitled case—

1. The Original Bond for Appeal of which a copy is herein set forth, and

2. Two copies of the Writ of Error as herein set forth, one for the Appellee and one to file in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Supreme Court of the State of Kansas, in the City of Topeka, this 29th day of September, A. D. 1920.

[Seal of Supreme Court, State of Kansas.]

D. A. VALENTINE,
Clerk of the Supreme Court of the State of Kansas.

211 UNITED STATES OF AMERICA, *ss:*

Supreme Court of Kansas.

In obedience to the commands of this writ, I herewith transmit to the Supreme Court of the United States a duly certified Transcript of the complete record and proceedings in the within entitled case, together with all things concerning the same.

In witness whereof, I hereunto subscribe my name and affix the seal of said Supreme Court of Kansas in the City of Topeka, this 29th day of September, A. D. 1920.

[Seal of Supreme Court, State of Kansas.]

D. A. VALENTINE,
Clerk of the Supreme Court of the State of Kansas.

Endorsed on cover: File No. 27,944. Kansas Supreme Court. Term No. 587. Alexander Howat, August Dorchy, Thomas Harvey, and Robert B. Foster, plaintiffs in error, vs. The State of Kansas. Filed October 19th, 1920. File No. 27,944.